

## § 503.1

## 29 CFR Ch. V (7–1–16 Edition)

U.S. workers in a manner prohibited by the regulations in this part or 20 CFR part 655, subpart A.

### § 503.1 Scope and purpose.

(a) *Consultation standard.* Section 214(c)(1) of the INA, 8 U.S.C. 1184(c)(1), requires the Secretary of Homeland Security to consult with appropriate agencies before authorizing the classification of aliens as H-2B workers. Department of Homeland Security (DHS) regulations at 8 CFR 214.2(h)(6)(iii)(D) recognize the Secretary of Labor as the appropriate authority with whom DHS consults regarding the H-2B program, and recognize the Secretary of Labor's authority in carrying out the Secretary of Labor's consultative function to issue regulations regarding the issuance of temporary labor certifications. DHS regulations at 8 CFR 214.2(h)(6)(iv) provide that an employer's petition to employ nonimmigrant workers on H-2B visas for temporary non-agricultural employment in the United States (U.S.), except for Guam, must be accompanied by an approved temporary labor certification from the Secretary of Labor. The temporary labor certification reflects a determination by the Secretary that:

(1) There are not sufficient U.S. workers who are qualified and who will be available to perform the temporary services or labor for which an employer desires to hire foreign workers; and

(2) The employment of the foreign worker will not adversely affect the wages and working conditions of U.S. workers similarly employed.

(b) *Role of the Employment and Training Administration (ETA).* The issuance and denial of labor certifications for purposes of satisfying the consultation requirement in 8 U.S.C. 1184(c), INA section 214(c), has been delegated by the Secretary to ETA, an agency within the U.S. Department of Labor (DOL), which in turn has delegated that authority to the Office of Foreign Labor Certification (OFLC). In general, matters concerning the obligations of an H-2B employer related to the temporary labor certification process are administered by OFLC, including obligations and assurances made by employers, overseeing employer recruitment, and assuring program integrity.

The regulations pertaining to the issuance, denial, and revocation of labor certification for temporary foreign workers by the OFLC are found in 20 CFR part 655, subpart A.

(c) *Role of the Wage and Hour Division (WHD).* Effective January 18, 2009, DHS has delegated to the Secretary under 8 U.S.C. 1184(c)(14)(B), section 214(c)(14)(B) of the INA, certain investigatory and law enforcement functions to carry out the provisions under 8 U.S.C. 1184(c), INA section 214(c). The Secretary has delegated these functions to the WHD. In general, matters concerning the rights of H-2B workers and workers in corresponding employment under this part and the employer's obligations are enforced by the WHD, including whether employment was offered to U.S. workers as required under 20 CFR part 655, subpart A, or whether U.S. workers were laid off or displaced in violation of program requirements. The WHD has the responsibility to carry out investigations, inspections, and law enforcement functions and in appropriate instances to impose penalties, to debar from future certifications, to recommend revocation of existing certifications, and to seek remedies for violations, including recovery of unpaid wages and reinstatement of improperly laid off or displaced U.S. workers.

(d) *Effect of regulations.* The enforcement functions carried out by the WHD under 8 U.S.C. 1184(c), INA section 214(c), 20 CFR part 655, subpart A, and the regulations in this part apply to the employment of any H-2B worker and any worker in corresponding employment as the result of an *Application for Temporary Employment Certification* filed with the Department of Labor on or after April 29, 2015.

### § 503.2 Territory of Guam.

This part does not apply to temporary employment in the Territory of Guam. The Department of Labor does not certify to DHS the temporary employment of nonimmigrant foreign workers or enforce compliance with the provisions of the H-2B visa program in the Territory of Guam.